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SUMMARY RECORD OF THE 1804th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 1 November 1999, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA

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GE.99-45169 (E)

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 6) (continued)

Hong Kong Special Administrative Region of the People's Republic of China (CCPR/C/HKSAR/99/1; CCPR/C/67/L/HKSAR/1) (continued)

1. At the invitation of the Chairperson, the members of the delegation of the Hong Kong Special Administrative Region of the People's Republic of China resumed their places at the Committee table.

2. The CHAIRPERSON invited the members of the Committee to raise additional points concerning the first 13 questions in the list of issues (CCPR/C/67/L/HKSAR/1).

3. Mr. WIERUSZEWSKI expressed dissatisfaction with the Hong Kong delegation's replies to question 9 concerning the case of Na Ka Ling and others. In addition, it was stated in paragraph 9 of the supplementary report that the Government of Hong Kong had pledged not to seek another interpretation by the Standing Committee of the National People's Congress serve in highly exceptional circumstances. That statement was very worrying, for it was precisely in exceptional circumstances that human rights protection was at risk of being compromised. He would appreciate for detailed clarification on the subject.

4. Concerning the number of police officers accused or found guilty of offences against persons under arrest or in detention, the Committee had that very day been informed of two further cases of police officers alleged to have practised torture during the preceding three years. One could only express surprise at the very small number of cases -- mentioned in paragraph 114 of the report -- in which police officers had been found guilty of assaulting suspects, since various sources had reported a clear increase in the number of complaints of police violence and various types of illegal treatment of persons suspected of offences. In addition, it appeared that no police officer had been charged with violation of the Crimes (Torture) Ordinance and that the text in question had so far never been applied. The situation might be different if there was an independent body to supervise police activities and, more generally, an independent body responsible for monitoring respect for human rights in Hong Kong. Moreover, paragraph 56 of the supplementary report showed that the number of complaints of assault in 1999 was almost double that of 1998, even though 1999 had not yet come to an end. How did the Hong Kong delegation explain that? Likewise, it was stated in paragraph 117 of the periodic report that the authorities were unable to provide statistical data on cases of confessions obtained by force, since neither the police nor the Director of Public Prosecutions maintained such statistics. The Committee could not accept such a reply as satisfactory, particularly since the number of allegations in the table in paragraph 57 of the periodic report pointed clearly to a need to adopt new procedures for the resolution of complaints against the police. Was the Government planning to take steps to ensure that all allegations of torture were duly referred to the competent authority?

5. Regarding the Hong Kong Government's policy towards asylum seekers, it appeared that they were treated differently according to their country of origin or legal status. It would be useful to know whether the Government was planning

to establish criteria for the granting of refugee status which would put an end to those differences in treatment. He had noted that the Hong Kong authorities had committed themselves to the principle of not turning refugees away, but they needed to go further and properly regulate refugee status in order to put an end to existing problems.

6. Ms. EVATT, reverting to the statement that the Government would not ask the Standing Committee of the National People's Congress for another interpretation "serve in highly exceptional circumstances", asked what criteria were used to determine the highly exceptional nature of a situation. In general, she was extremely concerned by the manner in which the Covenant's provisions were interpreted and applied in Hong Kong, and article 39 of the Basic Law seemed to be questionable in that respect. The Committee considered that the question of the interpretation and implementation of the Covenant should not be governed by provisions relating to exceptional situations but regulated by independent, impartial bodies applying objective criteria.

7. She also shared the misgivings of other members of the Committee concerning the Hong Kong authorities' refusal to set up an independent commission on human rights and requested clarification of the real reasons for that refusal. Additionally, how were the authorities planning to fulfil their obligations under article 26 of the Covenant and prohibit all acts of discrimination in areas such as employment or housing on the basis of race, sexual preference or age?

8. Concerning freedom of expression, the Hong Kong delegation had denied that there was self-censorship by the media. However, a study by the Political and Economic Risk Consultancy (PERC) on press practices in Hong Kong had found that the practice of self-censorship in particular was very widespread. She wished to hear the delegation's comments on the subject. Article 23 of the Basic Law envisaged laws prohibiting, for example, secession and subversion, which had not yet been enacted. It would be important to know the date on which the authorities intended to begin the public consultation process, whether it would be carried out in transparent fashion, and whether the Hong Kong courts would be competent to decide, once those laws were adopted, whether they were compatible with the Basic Law and the Covenant. Finally, it also appeared in connection with the Official Secrets Ordinance that the authorities had not taken all of the necessary measures to ensure that restrictions on freedom of expression were established according to objective and impartial criteria.

9. Mr. KRETZMER reminded the Committee, in connection with the issue of freedom of expression that article 2 of the Covenant required the State party not only to respect the rights recognized in the instrument but also to ensure them to all individuals within its territory and subject to its jurisdiction. He wished to know what measures the Government had taken to ensure that the population of Hong Kong enjoyed appropriate protection against harassment by individuals on the basis of opinions expressed. Certain sources indicated that the police had removed the Taiwanese flag on certain occasions when it was unfurled in Hong Kong. That step could raise questions concerning the application of article 19 of the Covenant, and he wished to know the basis for the restrictions of freedom of expression which could be imposed in such situations.

10. Concerning the complaints of human rights violations by the police, the Hong Kong authorities had not followed up the Committee's recommendation that they should set up an independent council responsible for examining those complaints and the reasons cited were not at all convincing. Would the Government review its position? As to the statistics concerning the number of complaints, the Hong Kong authorities appeared to consider that they held no interest, and that the mere fact that the police officers implicated in cases of human rights violations were rarely prosecuted provided no evidence. He agreed that statistics were not enough, but emphasized that there was an imperative need for the process of investigation into allegations of human rights violations to be credible, otherwise many victims would not complain. In that sense, the production of statistical data and prosecution in every case were important credibility factors. He also agreed with Mr. Wieruszewski's concerns regarding the handling of allegations of police torture, particularly in the cases mentioned in paragraph 114 of the report. If one followed the reasoning that the prosecution must prove that the act was intentional in order to determine whether a charge of torture could be laid (para. 115), it was obvious that pouring water into the ears and nostrils of a suspect and stuffing a shoe into his mouth represented an act of torture. If the Hong Kong authorities did not qualify those acts as such, could they not, however, charge the police officers with a less serious offence?

11. Mr. AMOR expressed concern at the content of the provisions of article 158 of the Basic Law in the light of its articles 19 and 39. A member of the Committee had asked what would happen if the judiciary did not comply with the interpretation of the Basic Law given by the Standing Committee of the National People's Congress. There were also grounds for wondering whether the judiciary was competent to interpret an interpretation of the Basic Law given by the Standing Committee. Apparently, that possibility was not ruled out, and in the legal sense it could be justified. He wished for more information on that point.

12. As to question concerning respect for the right to life, the Hong Kong delegation's replies were not fully satisfactory. He noted that Cheung Tze-Keung, Chin Hon-sau and Chan Chi-hou had been on Hong Kong soil at the time of their transfer to mainland China. What was the legal reasoning for their transfer when the penalty for the offence of which they were accused was heavier in mainland China than in Hong Kong, and why did the Hong Kong authorities agree to their transfer in the circumstances?

13. There were other outstanding causes for concern, especially regarding the right to enter one's own country. It appeared that a large number of persons having genuine ties with Hong Kong were prevented from entering the territory, and he found it difficult to understand how such a situation could be compatible with article 12, paragraph 4 of the Covenant. The periodic report was rather brief, on the subject of freedom of religion and he wished to know whether the religious groups and churches represented in Hong Kong were required to comply with a registration procedure, whether there were any new religious movements in Hong Kong, particularly those known as sects, whether members of the Falun Gong movement had taken refuge in Hong Kong lately and, generally, whether religious groups in the territory were increasing in size. Paragraph 462 of the report stated that the Election Committee included representatives of the "religious subsector". He wished to know what that meant, how many people were included in that category, what religious groups it involved and how their representatives

were appointed. Finally, he was interested to know whether religious groups in Hong Kong had the possibility of maintaining relations with religious groups or churches abroad, notably in Taiwan.

14. Mr. HENKIN said it was gratifying to note that the People's Republic of China had decided to adopt the Covenant and hoped that the instrument of ratification would shortly be submitted. He wished to return to the concept of "constitutionalism", which had already been brought up and which was reflected in the very concept of the Basic Law of the Hong Kong Special Administrative Region. That concept was also reflected in the Covenant and, if the Basic Law was to enjoy supreme authority in Hong Kong, the fact that the Covenant was applied fully to the territory mean that it also had supreme authority. That being so, the tenet of "constitutionalism" was based on the principle that the provisions of the Basic Law were to be interpreted by an independent body and each of them was to be considered, as were generally all legislative provisions, in the light of the Covenant in order to verify its compatibility. In that connection, article 18, paragraph 3, of the Basic Law did not appear compatible with article 4 of the Covenant and he hoped that it would consequently be amended or at the very least interpreted in a manner compatible with the Covenant. Finally, he drew the delegation's attention to the need to provide precise information on the results and effects of judicial decisions in order for the Committee to have an accurate picture of the situation in Hong Kong.

15. Mr. LAN (Hong Kong Special Administrative Region), replying to the questions concerning the role of non-governmental organizations (NGOs) in Hong Kong, said that the Government regarded them as partners in the advancement of human rights. They shared the same objectives, encountered the same difficulties and, although they tackled problems differently and sought different solutions, they shared the concern for the welfare of all within a pluralist society committed to freedom of expression.

16. Regarding the establishment of a human rights commission, the Government of Hong Kong had studied the recommendation drawn up by the Committee following consideration of the previous report (CCPR/C/95/Add.5) and he reiterated that, as explained in paragraphs 26 and 27 of the periodic report, such a commission was not necessary and would provide no additional advantage.

17. In connection with the transfer to Japan of the Director of Radio Television Hong Kong (RTHK), allegedly as part of a violation of freedom of expression, he said that it was nothing of the kind, since the person concerned had been transferred after 13 years of service in Hong Kong and thus fully deserved the promotion which her transfer to Japan represented; the decision was in no way a punishment, quite the opposite. Moreover, the authorities were in the habit of sending highly-qualified people to work abroad as correspondents: on their return to Hong Kong, they were often promoted to very high posts, particularly as government officials. Hence, freedom of expression and of the media were in no way called into question by that affair. Concerning the case of the Eastern Weekly newspaper , he explained that a young woman whose photographs had been published together with unpleasant commentaries without her consent had complained to the Commission responsible for reform of the privacy protection laws. The Commission had asked the newspaper to stop the practice, which was a violation of the Personal Data (Privacy) Ordinance. The Eastern Weekly had complained to the courts and the complaint had been dismissed. The Commissioner for the Protection of Personal Data would now issue an enforcement

notice calling on the newspaper not to publish any more articles of the kind and the Eastern Weekly could challenge the notice before the competent administrative appeals court.

18. Concerning the difficulties arising out of the provisions relating to the right of abode, the Government of the Hong Kong Special Administrative Region had only two options: to bring an amendment of the Basic Law before the National People's Congress under article 159 of the Basic Law or ask the Standing Committee to interpret the relevant provisions under article 158 of the Law. Since all the members of the National People's Congress had expressed hostility to any modification of the Law, the Government of the Special Administrative Region, supported by public opinion, had preferred the second solution.

19. Mr. ALLCOCK (Hong Kong Special Administrative Region) explained that the case brought against the Director of Immigration by parents demanding the right of abode for their children born in other parts of China had required determination of whether the Standing Committee should be asked to interpret article 22 4) of the Basic Law pertaining to entry into the Special Administrative Region by persons from other parts of China and article 24 2) 3) pertaining to the right of abode. The current position of the Government Counsel was that article 24 2) 3) did not fulfil the conditions laid down because it did not cover matters coming under the central Government of China, or relations between the central Government and a region of the Chinese state. That position had been confirmed by the Court of Final Appeal. The Standing Committee of the National People's Congress had judged otherwise, considering that the article in question should have been referred to it. Hence, it had provided an interpretation. Replying to an objection raised by one member of the Committee that the Government Counsel had not touched on the power of interpretation conferred on the Standing Committee by article 158 of the Basic Law, he said that the Government Counsel had been correct not to do so because that power of interpretation had no relevance to the matter before the Court of Final Appeal and the latter's ruling. Certain members of the Committee had considered that the Standing Committee had not explained how the ruling of the Court of Final Appeal failed to reflect the true intention of the Basic Law. He believed, on the contrary, that the Standing Committee had clearly indicated in its interpretation how articles 22 4) and 24 2) 3) should be interpreted and how the Court of Final Appeal had failed in that respect. He also explained that the Standing Committee had not provided details of the criteria applicable to the submission of requests for interpretation under article 158 3) of the Basic Law because it had been asked to interpret not that article but the two preceding ones. As to the criticism of the Standing Committee's statement that it had been guided by the opinions issued in 1986 by the Preparatory Committee on the Basic Law when the law had been passed only in 1990, he explained that the Standing Committee had not said that it drew its inspiration from the opinions in question but that the legislative intent was apparent in those opinions. The Standing Committee had not considered those opinions to be preparatory.

20. Regarding the issue of determining the case law value of the procedure followed for matters concerning the right of abode, he reminded the Committee that, in common law, the most recent interpretations of the competent judicial bodies had priority over precedents and were authoritative. They were retroactive from the date of promulgation of the provision to which they referred and could be invoked even in current cases in which no definitive

judgement had been reached. Hence, there was no conflict between that and article 14 of the Covenant.

21. Several members of the Committee appeared to fear that the power of interpretation exercised by the Standing Committee under article 158 of the Basic Law, if unlimited, posed a threat to the basic rights embodied in chapter III of the Basic Law. That power was subject to political and legal restrictions. Politically, the Standing Committee only provided interpretations rarely, and it had pronounced on the issue of the right of abode only with the greatest reticence on being asked to do so by the Government of the Special Administrative Region. The Government of the Special Administrative Region, for its part, was determined to submit requests for interpretation to the Standing Committee only in exceptional cases and intended, moreover, to adopt criteria in that regard. Legally, the Standing Committee was authorized only to clarify the true legislative intent and could in no case modify the text. Finally, as the People's Republic of China was committed to continue implementing the provisions of the Covenant in its territory, there was no reason to fear that the basic rights embodied in that instrument could be called into question by interpretations of the Standing Committee.

22. Concerning the issue of desecration of the national and regional flags (paras. 368 to 374 of the report) in connection with freedom of expression, the Government of the Special Administrative Region had not asked the Standing Committee to interpret the provisions protecting national emblems. In all of the procedures applied under the relevant regulations, the Government had made it clear that those provisions were compatible with the articles of the Basic Law guaranteeing freedom of expression, and the Court of Final Appeal had not yet reached a decision on that question. However, it was the Government's duty to point out to the Court that the Special Administrative Region's ordinance on the protection of the flag and emblems of the Region embodied the national legislation relating to the protection of the flag, which, under article 18 and annex III of the Basic Law, had to be applied. He added that, in cases of conflict between domestic legislation and article 39 of the Basic Law, the Court of Final Appeal could and should request the Standing Committee to provide an interpretation, but it was for the Court and the Court alone to decide whether it was appropriate to do so. He said that it was impossible to give the Committee the assurance, requested by one member, that the Government of Hong Kong would never ask the Standing Committee to pronounce on an article of the Basic Law relating to human rights, for such a restriction would be incompatible with the Basic Law, which required reference to the Standing Committee.

23. Certain members had expressed concern that the powers of interpretation envisaged under article 158 of the Basic Law were not identical to those under article 177 of the Treaty of Rome: he freely recognized that and would say only that the compilers of the Basic Law had been partially inspired by the Treaty. It was also the case that certain civil law courts empowered the legislative to interpret legislative texts even where their provisions differed from those of article 158. Referring to the objection voiced by certain members of the Committee to the power of interpretation conferred on the Standing Committee on the grounds that it did not respect the principle of separation of powers, he emphasized that the Government of the Hong Kong Special Administrative Region had to adapt to the particular problems posed by the "one country, two systems" approach, which could not be resolved by applying concepts drawn from other systems. It was normal that the Hong Kong regional courts should, where

necessary, apply to a competent national organ -- the Standing Committee -- of the People's Republic of China, since Hong Kong was a constituent part and the Basic Law was a national law. Any eventual failing in terms of the separation of powers was the result of that reality.

24. Moving to more specific questions, he explained that the Basic Law did not provide expressly for the Chief Executive of the Special Administrative Region to request an interpretation of the Standing Committee, but the Government of the Special Administrative Region considered that the Constitution authorized him to do so.

25. Differences between the interpretations of and the amendments to the Basic Law were regulated by articles 158 and 159 of the Law, which provided for different procedures. The purpose of interpretations was to provide clarification of the legislative intent in a given provision, by referring to the Standing Committee, whereas the purpose of amendments was to modify a legislative text through application to the National People's Congress. Justification of the view that the Court of Final Appeal had interpreted the law incorrectly in the cases brought by individuals against the Director of Immigration could be determined on the basis of the fact that article 22.4 of the Basic Law had its origin in the People's Republic of China's consistent practice - since 1986 - of establishing a system regulating entry to Hong Kong by persons from other parts of China in order to preserve Hong Kong's prosperity. The decision to maintain that practice had been taken jointly, as stated in annex I (section I, para. 4) of the Joint Declaration. As to article 24 2) 3), the interpretation accepted by the Sino-British Joint Liaison Group, confirmed by the opinions of the Preparatory Committee and then approved by the National People's Congress, was that Chinese nationals born outside Hong Kong to Hong Kong residents had the right of abode on condition that, at the time of their birth at least one parent was a permanent resident. The Government of the Special Administrative Region had considered that the decision of the Court of Final Appeal did not reflect that legislative intent and had thus asked the Standing Committee to interpret the two articles.

26. Concerning article 160 of the Basic Law, which provided for modification or of laws found after the retrocession to conflict with the Basic Law, he said that their provisions could be applied if a person demonstrated to a Hong Kong court, citing for example article 39 of the Basic Law, that a legislative provision in effect within the Region was incompatible with the Covenant. In that case, the court would refuse to apply the provision and the Government of the Special Administrative Region would follow the appropriate procedure for obtaining its repeal. To date, there had been no such occurrences. Replying to a member of the Committee who had considered that the Chief Executive of the Special Administrative Region was bound by the decision of the Court of Final Appeal not to ask the Standing Committee to interpret articles 22 4) and 24 2) 3), he stated that the Chief Executive could nevertheless apply to the Standing Committee inasfar as the purpose of his application was not to call into question the Court's decision to abstain but to ask the Committee to interpret the articles in question under article 158 of the Basic Law. According to some members of the Committee the solution of applying for an amendment was preferable to that of applying for an interpretation. It was necessary to understand the unique situation of the Hong Kong Special Administrative Region, whose courts were regional courts applying national legislation: the Government

of Hong Kong thus preferred, where necessary, to ask the Standing Committee for an interpretation rather than to seek an amendment.

27. As to whether the Standing Committee had taken account in its interpretations of the Covenant's provisions, particularly those concerning the right to a fair trial, freedom of movement and the rights of the family, the Government of the Special Administrative Region had submitted to the State Council a large number of files and documents concerning Court of Final Appeal decisions relating to rights protected by the Covenant as well as documents provided by lawyers and the Hong Kong Bar Association. The Standing Committee had thus been able to take them into consideration when formulating its interpretations. As far whether the Standing Committee's interpretations could be influenced by political or other considerations, he emphasized again that the Standing Committee was strictly limited to clarifying legislative intent, to the exclusion of all other considerations. Regarding the possibility that courts might not comply with an interpretation, the question had been submitted to the Court of Final Appeal in a specific case. The decision was pending, but experience suggested that there was no reason to believe that it would not follow the interpretation. It had also been asked whether an interpretation would be sought where there was conflict between the Covenant and the Basic Law, and he explained that if the two conditions for application for interpretation of a provision (mentioned in connection with article 24 2) 3)) were satisfied the interpretation process would begin. Finally, the reply to the question of what happened in the case of Covenant rights which were not reproduced in the Bill of Rights, such as the right to self-determination, was provided in the written information submitted.

28. Mr. WANG (Hong Kong Special Administrative Region), replying to the question regarding the possibility of the courts sentencing a person found guilty of torture to a lesser sentence than that by which the offence was punishable said that that the Hong Kong authorities fully respected the rights set out in article 7 of the Covenant, their obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and national legislation on the subject. As in other countries, the judicial authorities obviously satisfied themselves of the existence of adequate admissible evidence before reaching a decision, and it had been precisely that evidence which was lacking in the case of the four police officers mentioned in paragraph 114 of the report.

29. Mr. LAN (Hong Kong Special Administrative Region) said that the Privacy Sub-Committee was pursuing public consultations at the end of which it would decide whether or not to maintain its proposal for the creation of a press council for the protection of privacy. The Law Reform Commission would then publish its final recommendations on the subject and the Government would study them carefully before stating its opinion.

30. Concerning the fear that Hong Kong might cease to submit reports to the Committee, he emphasized that China, which was not yet a party to the Covenant, had made special arrangements for the preparation and submission of the report and that the Hong Kong authorities also attached great importance to that process. The report had been compiled by the latter and forwarded to the Hong Kong Ministry of Foreign Affairs and then directly to the Centre for Human Rights at Geneva. Thus, there were grounds for optimism concerning the future of dialogue between Hong Kong and the Committee.

31. A member of the Committee wished to know whether the Government intervened in the religious activities of citizens. The right to freedom of religion was set out in article 32 of the Basic Law, article 27 of which guaranteed freedom of association to the residents of Hong Kong. Any citizen was therefore free to practise the religion of his choice so long as the laws of the country were respected. While the Government did not keep any register of religions, it was worth noting that, when the Basic Law was being compiled, the six main religious groups of the country had effectively been "registered", which allowed them to have a say in the legislation being drawn up on questions affecting them.

32. Ms. CHU (Hong Kong Special Administrative Region) explained that any person wishing to enter Hong Kong in order to apply for the status of permanent resident had first to obtain a certificate of entitlement from the Immigration Department. That regulation, which did not apply to tourists, ensured that the right to take up residence in the Hong Kong Special Administrative Region was verified before the individual entered the territory. The Court of Final Appeal had confirmed the constitutionality of those arrangements in its decision of 29 January 1999. The Hong Kong authorities did not consider that procedure to be at variance with article 12 of the Covenant. Hong Kong's permanent residents were completely free to enter and leave the territory. It was also to be recalled that, under article 154 of the Basic Law, the Hong Kong immigration service and its Chinese counterpart were independent of one another. The decisions process for deportation orders was transparent and subject to judicial supervision. Applications for deportation orders were made by the Director of Immigration, who notified the individual concerned of the intention to request his deportation. The immigrant could appeal against that decision and any appeal would be considered by the Chief Executive in council. Complaints could also be addressed to the justices of the peace, who visited detention centres regularly, to the Ombudsman, or to the Legislative Council. Finally, the Committee could rest assured that Vietnamese refugees enjoyed the same rights as all other Hong Kong residents and were not subjected to any inhumane treatment.

33. Ms. YAU (Hong Kong Special Administrative Region) explained, in reply to a concern expressed concerning the non-implementation of the Interception of Communications Ordinance, that the Ordinance, adopted in June 1997 by the former Legislative Council, had been drawn up without consultation with the administration, and contained provisions which could severely limit the ability of law enforcement agencies to combat crime. For example, one provision authorized the agencies to renew warrants only once, and only for a period of 90 days. The Government was thus carefully evaluating the implications of the Ordinance, taking into account various commentaries which had been produced and the results of studies of practice in other countries. It did not wish to take a hasty decision on such an important and controversial subject. In the meantime, interception of communications was being carried out in strict compliance with the law.

34. Concerning the functioning of the Independent Police Complaints Council, she explained that, under the system in force, it could ask the Complaints against Police Office to reopen an inquiry or investigate particular aspects in greater detail if it was not satisfied with the results obtained. If doubts remained as to the propriety of the investigation at its conclusion, the Independent Council could apply to the Chief Executive and draw up its own recommendations.

35. Ms. LAM (Hong Kong Special Administrative Region), replying to Mr. Amor, said that the defendants named by him had not been handed over to the Chinese authorities but that they had voluntarily gone to China, where their arrest had taken place.

36. Mr. DEAN (Hong Kong Special Administrative Region), explaining in greater detail the role of the Privacy Commissioner for Personal Data, said that his appointment was governed by the provisions of the Personal Data (Privacy) Ordinance, in accordance with which he was appointed by the Chief Executive for a period of five years; he could resign by submitting a request to the Chief Executive who could accede to his request after consultation with the Legislative Council. The information that the Privacy Sub-Committee was planning to establish a code of practice on media intrusion was no more than an unfounded rumour.

37. On the question of the removal of Taiwanese flags unfurled in the territory of the Hong Kong Special Administrative Region, he reminded the Committee that China, of which Hong Kong was once again a part, did not recognize the independence of Taiwan or its emblems, which were prohibited by law. The removal of the flags, which had in fact only been carried out on public land in Hong Kong, was due to that reason. He did not for his part see any violation of freedom of expression nor of article 19 of the Covenant in that removal. Finally, he confirmed that new religions such as the Church of Unification were emerging in Hong Kong.

38. Ms. YAU (Hong Kong Special Administrative Region) said, in reply to question 14, that, under the Public Order Ordinance, the organization of public meetings or processions could be subject to objection or prohibition if they constituted a threat national security, public safety, public order or the protection of the rights and freedoms of others. If the Director-General of Police had an objection to a proposed demonstration, he had to inform the organizers in writing: they could appeal to an independent appeals commission set up in conformity with the Public Order Ordinance. The Director-General of Police had, in reaching his decision, to take special account of the declared purpose of the demonstration, particularly if it advocated separation from China or independence for Tibet.

39. Turning to question 15 on freedom of assembly, she said that the introduction of a compulsory registration system for associations in order to ensure that the person responsible for associations, namely, the Director-General of Police, had sufficient information to determine whether an association should be authorized to engage in activities in Hong Kong, was neither a violation of freedom of assembly, nor of articles 21 and 22 of the Covenant. However, he could only act in the cases envisaged by the Amendment Ordinance and after consultation with the Security Secretariat. Since the amendment had been adopted, the Director-General of Police had not rejected a single application to set up an association.

40. Ms. CHAN (Hong Kong Special Administrative Region) reminded the Committee that the Employment Ordinance recognized workers' right to become members or officials of a trade union and prohibited employers from preventing or discouraging their workers from exercising their trade union rights. Employers contravening the Ordinance were committing an offence and were liable to be fined. In June 1997, new provisions had been added to the Ordinance permitting

workers to claim compensation if dismissed as a result of exercising their right to join a trade union. If the employer could not provide an acceptable reason for their dismissal, the industrial tribunal could order the employee to be reinstated or redeployed subject to mutual agreement by the parties. The specific clause on mutual agreement had been debated by the Government, which had decided that it did not conflict with article 22 of the Covenant.

41. Mr. LAN (Hong Kong Special Administrative Region) explained, in reply to question 17, that the Sex Discrimination Ordinance and the Family Status Ordinance were very effective. There was an Equal Opportunities Commission, an independent body which carried out studies and public awareness campaigns, received complaints, conducted inquiries and provided assistance and advice to parties. The elimination of discrimination in job advertisements had made considerable progress since the Ordinance came into effect in 1996. Previously, 37 per cent of job advertisements had contained an indication of gender preference: those indications had now disappeared completely. In a 1998 study of the Equal Opportunities Commission's activities, 81 per cent of those questioned knew of the Family Status Ordinance, 64 per cent knew that employers had to combat sexual harassment in the workplace, and 74 per cent said that they would complain if they were discriminated against.

42. The percentage of women in senior positions in the civil service had been 5.2 per cent in 1984, 7.7 per cent in 1989, 12.3 per cent in 1994 and 21 per cent in July 1999. As to the Advisory Council, in 1989 it had 14.9 per cent female members, compared to 18.6 per cent in 1999. The Legislative Council had 11 per cent female members in 1993 as opposed to 16.7 per cent in 1999. The Executive Council had 23.5 per cent in 1993 and 28 per cent in 1999.

43. Mr. DEAN (Hong Kong Special Administrative Region), replying to question 18, said that it was difficult as yet to evaluate the effectiveness of the Domestic Violence Ordinance. It authorized judges to take protective measures to prevent one spouse or partner from committing violence against the other. If the judge had reason to believe that a party had caused bodily harm to the plaintiff or injury to a child, he could order that individual's arrest. Other measures had also been taken to deal with the problem. In collaboration with non-governmental organizations, battered women's hostels had been established, steps taken to provide financial assistance, and arrangements made for the care of children. In 1998, 1,200 new cases of battered women had been reported, and there had been 1,172 in the first nine months of 1999. Those figures did not cover marital rape but, according to statistical data, 90 cases had been reported in 1998 and 72 in the first nine months of 1999. The wide variety of services offered to the victims of rape and family violence including assistance and counselling, telephone hotlines, social security benefits, etc. NGOs offered similar services, and in particular cared for rape victims who had become pregnant. In 1995, a working group on battered women had been set up and was carrying out public education and awareness campaigns. Under common law, marital rape was a crime, so that a husband could be found guilty of rape for having sex with his wife without her consent.

44. Mr. SO (Hong Kong Special Administrative Region) said that the Legislative Council was working for the peaceful, progressive and ordered development of democracy in accordance with the Basic Law. The number of members of the Legislative Council elected by universal suffrage was 20 under the present mandate and would increase to 24 for the second mandate, due to begin in 2000,

and to 30 for the third mandate. The final objective was to have all members of the Council elected by universal suffrage, as envisaged by article 68 of the Basic Law. Regarding the pace of development of democracy, the situation was very different. The Chief Executive had expressed the hope that the community would be sufficiently mature by 2007 for the establishment of political institutions which would increase community participation in the decision-making process. That did not mean that debate on those questions would begin only in 2007. A study would be made in 2000 of the various systems of government to be found in the world in order to analyze in depth their advantages and disadvantages and determine which was the most appropriate for Hong Kong. After the second legislative council was elected in 2000, various reforms would be proposed and in-depth consultation would take place in order to encourage the community to discuss the issues in rational manner.

45. Regarding participation in public affairs (questions 19, 20 and 21), he explained that the functions of the Legislative Council under its mandate were to approve, amend and abrogate laws and to approve the budget and public spending. Under the Basic Law, the Government had to account for its activities to the Legislative Council. The function of the district councils was to advise the Government on district affairs and improve cultural and leisure facilities at district level. The majority of their members were elected directly by universal suffrage. Only 20 of them were ex officio or designated members. The system had the backing of the community. Currently, the political structure of Hong Kong was based on three elements: at the central level, there was the Legislative Council, responsible for formulating laws; at local level, there were the district councils; and at the intermediate level, there were the urban and regional councils. The public had been consulted and had approved the Government's proposal to dissolve certain councils at the end of their mandate on 31 December 1999. That reform would facilitate reinforcement of the role of the Legislative Council and the elected bodies. At district level, the district councils' role would increase, and they would be consulted on measures to be taken in the districts. Their funding would be increased to allow them to improve the local environment and develop cultural activities. He said that he could not agree with the view expressed by one member of the Committee that the Government's decision to abolish the municipal councils flew in the face of public opinion. The proposal had been made after public consultation in June and July 1998; on that occasion, the authorities had met members of the municipal and district councils, the main political parties and the universities. The public had also been given the opportunity to express its views directly. In October 1998, the authorities had published a report summarizing the substance of the consultations and opinions expressed. The authorities' proposals had been backed by the majority of the public, as several independent opinion polls had shown. For example, a survey by the Chinese University of Hong Kong Institute of Asia-Pacific Studies had found that 66.7 per cent of the public approved of the proposals and only 16.7 per cent disapproved.

46. Mr. LAN (Hong Kong Special Administrative Region) said, in reply to the question 21 concerning the election of village representatives, that both men and women had to be eligible in order to stand as candidates. In accordance with the provisions of the Sex Discrimination Ordinance, the Government did not recognize village representatives who had been elected in conditions not allowing men and women to participate in the elections on a fully equal footing. In the long term, the Government planned to legislate on the issue.

47. Mr. DEAN (Hong Kong Special Administrative Region) explained, in response to question 22, that the Committee's concluding observations were forwarded to the Legislative Council and publicized in the press. The preparation of the report before the Committee had begun in February 1998 and its reliant features had been made public at the time. In March, a meeting had been organized with NGOs to encourage them to comment and participate in the process. The consultations had been completed in mid-April, though late communications had been accepted and account had been taken of them in the preparation of the report. It had been submitted in January 1999 and copies sent to the Department of the Interior and the Legislative Council for comment. It had also been made available to all interested persons and published on the Internet. In September-October 1999, special meetings had been organized to enable NGOs to express their views on the report; they had been provided with written or oral replies.

48. The CHAIRPERSON thanked the members of the delegation for their explanations and invited members of the Committee to ask oral questions.

49. Mr. YALDEN said that he would like to revert to question 17 on the situation of women. He noted that the Equal Opportunities Commission's report referred to a need to empower women and asked what action the Government of Hong Kong had taken in the matter. On the subject of equal treatment of men and women, the report stated that there were large inequalities of pay between the sexes, and referred to recommendation that the "equal pay for equal work" principle should be made law. He asked what steps the Government of Hong Kong intended to take in that connection. Finally, he thanked the delegation for the data it had provided concerning women's participation in the advisory councils. However, he noted that the figure given - approximately 18.5 per cent - was very low, even though it was increasing, and asked what the Government of Hong Kong intended to do to improve the situation.

55. Mr. LALLAH, said, in connection with the Government's decision to abolish the municipal councils against public opinion, that his information came from a reliable source which stated that the Legislative Council itself had adopted a resolution recommending the amalgamation of the two municipal councils rather than their abolition. He was willing to vouch for the reliability of his information and requested the delegation to inform him whether that was the case or not.

51. Lord COLVILLE, referring to the restrictions on the right of assembly and the creation of associations, said that they had been added since 1997. In point of fact, the Police Commissioner's powers had been increased, allowing him to prohibit a demonstration or meeting on the grounds that it posed a risk to national security or public order or to the rights and freedoms of others. That wording was the same as that of article 21 of the Covenant. However, the latter stated that those restrictions were necessary in "a democratic society". The Public Order Ordinance allowed for appeal to a council or to the Chief Executive against the Police Commissioner's decisions. He found that procedure long, costly and ineffective and liable only to make matters more difficult for citizens wishing to demonstrate or to register their association.
52. He also expressed concern at the procedure established in respect of disputes arising from the election of village representatives, since an eventual dispute would only be resolved a posteriori by the Secretary for the

Interior. Would it not be wiser to act before the candidates were elected and before the election itself rather than afterwards?

53. Mr. SOLARI YRIGOYEN thanked the delegation for its clear answers to the written questions. He expressed concern at the restrictions of the provisions of article 21 of the Covenant relating to the right of assembly. According to his information, the police was slow in granting authorization for demonstrations and questioned the organizers about the slogans that would be featured: that was worrying. He asked the members of the delegation to allay his fears.

54. Concerning article 25 of the Covenant, he expressed satisfaction at the fact that elections to the Legislative Council had been held the previous year. However, he noted that only 20 of the 60 members were elected directly. He wished to know whether that system was provisional and whether it would remain in force only for the transitional period. He also asked whether electoral freedom would increase after 2007 as envisaged by electoral law. Finally, he considered the decision to abolish the two municipal councils to be a step backwards inasmuch as they had wished to be amalgamated and not abolished.

55. Mr. BHAGWATI noted in connection with the composition of the Legislative Council that the United Kingdom had expressed a reservation only concerning article 25 of the Covenant and had not concerning equal suffrage or the type of ballot. As the Committee had already stated in its concluding observations on the previous Hong Kong report, the provisions of article 25 applied when a council was unelected or partially elected.

56. The United Kingdom had not expressed reservations concerning article 26, which was being infringed. He asked why the recommendation made by the Committee in its concluding observations on the previous report had not been followed up. He expressed the hope that the Government would reconsider its decision, since it was preferable that all members of the Legislative Council should be elected directly by all voters, in accordance with the obligations assumed under articles 25 and 26 of the Covenant. It was true that there had been progress in connection with voting rights, but it did not go far enough. Finally, he expressed concern at the abolition of the municipal councils, which deprived the public of its right to participate in local affairs.

57. The CHAIRPERSON said that the Committee would complete its consideration of the report at the following meeting.

The meeting rose at 6.15 p.m